

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF YAKIMA**

IN THE MATTER OF THE )  
DETERMINATION OF THE RIGHTS )  
TO THE USE OF THE SURFACE )  
WATER RIGHTS OF THE YAKIMA )  
RIVER DRAINAGE BASIN, IN )  
ACCORDANCE WITH THE PROVISION )  
OF CHAPTER 90.03, REVISED )  
CODE OF WASHINGTON, )

THE STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Plaintiff, )

V.

JAMES J. ACQUAVELLA, et al., )  
)  
Defendants. )

No. 77-2-01484-5

**ORDER PENDENTE LITE  
RE: TEMPORARY CHANGE  
TRANSFER TO TRUST  
Selah-Moxee Irrigation District**

### Claim Nos. 1651, 1888

THIS MATTER having come before the Court on the Petition of Selah-Moxee Irrigation District for Order Pendente Lite Re: Temporary Change, Transfer to Trust, the Court having heard from all interested parties and being fully advised.

NOW, THEREFORE, the Court grants the petitioner's request to allow the temporary change of the Selah-Moxee Irrigation District water right to allow a portion of the SMID water right to be transferred to the Washington State Trust Water Right Program pursuant to RCW 90.42.080, as follows, and it is HEREBY ORDERED:

1. The Selah-Moxee Irrigation District (SMID) water right, as reflected in the Conditional Final Order filed September 9, 1998, includes the former rights of Moxee Ditch Co. and Moxee-Hubbard Ditch Co. These rights are collectively referred to herein as “MOX-HUB” water right.

The following summarizes the MOX-HUB rights:

**Source:** Yakima River

**Purpose of Use:** Irrigation, frost protection, stock water and other agricultural purposes and domestic supply, including irrigation of lawns, gardens & landscaping.

**Period of Use:** April 1 through October 31.

**Priority Date:** January 26, 1887

**Quantity:** 13,781 acre-feet natural flow and 959.4 acre feet of Warren Act water, according to the following schedule of instantaneous flow:

|              | April      | May        | June       | July     | Aug.     | Sept.      | Oct.     |
|--------------|------------|------------|------------|----------|----------|------------|----------|
| Natural Flow | 38         | 38         | 38         | 38       | 38       | 29         | 22       |
| Warren Act   | <u>1.4</u> | <u>2.3</u> | <u>3.1</u> | <u>3</u> | <u>3</u> | <u>2.1</u> | <u>1</u> |
| Total        | 39.4       | 40.3       | 41.1       | 41       | 41       | 31.1       | 23       |

**Period of Use:** April 1 through October 31

**Place of Use:** Lands within the boundary of the Selah-Moxee Irrigation District as described in the SMID CFO filed September 9, 1998.

**Point of Diversion:** 1900 feet south and 400 feet east of the northwest corner of section 17, being within the SW1/4 NW1/4 of section 17, Township 13 North., Range 19, EWM

2. It is Ordered that the portion of the SMID water right that is hereby authorized to be temporarily transferred to the Washington State Trust Water Rights Program (RCW 90.42.080) for the 2008 period of use is as follows:

**Quantity:** The total quantity subject to this request for transfer to trust is 5,000 acre-feet and instantaneous flow according to the following schedule.

| Quantity Transferred          |  |       |     |      |      |        |           |         |       |
|-------------------------------|--|-------|-----|------|------|--------|-----------|---------|-------|
|                               | March  | April | May | June | July | August | September | October | Total |
| AF                            | 600  | 650   | 650 | 750  | 700  | 700    | 550       | 400     | 5,000 |
| <b><u>Purpose of Use:</u></b> | Instream flow under the Washington State Trust Water Right Program (RCW 90.42.080) |       |     |      |      |        |           |         |       |

**Period of Use:** The 2008 irrigation season, April 1 through October 31.

**Place of Use:** Instream flow in the Yakima River between the Moxee-Hubbard Point of Diversion and the confluence with the Columbia River.

DONE IN OPEN COURT this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
JUDGE/COMMISSIONER

Presented by:

TALBOTT, SIMPSON & DAVIS, P.S.  
Attorneys for Selah-Moxee Irrigation District

By: \_\_\_\_\_  
JAMES E. DAVIS, WSBA #5089